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Directive 02-15: Tax Reporting Obligations of Chapter 7 Trustees in Bankruptcy

Introduction: This Directive explains the tax reporting obligations for Chapter 7 trustees in bankruptcy who are acting on behalf of a debtor corporation.[\[1\]](#) Chapter 7 of the United States Bankruptcy Code governs liquidation of a debtor.

Issue: What are the tax reporting obligations for a Chapter 7 trustee in bankruptcy, charged with the duty of administration of the Chapter 7 debtor corporation's bankruptcy estate?

Directive: A trustee administering the liquidation of a Chapter 7 debtor corporation is required to file Form 2 only if the bankruptcy estate recognizes net taxable income under Massachusetts law.

Discussion of Law:

Section 728(b) of the United States Bankruptcy Code provides that, "notwithstanding any State or local law imposing a tax on or measured by income, the trustee shall make tax returns...for a debtor that is a corporation in a case under this chapter only if such...corporation has net taxable income for the entire period after the order for relief under this chapter during which the case is pending...." While this provision of the Bankruptcy Code requires a Chapter 7 trustee to "make tax returns," it does not prescribe the type of tax returns that should be filed. The type of tax return to be filed is prescribed by State law.

For Massachusetts tax purposes, income received by a trustee in bankruptcy is subject to tax under G.L. c. 62, §§ 13 and 25. General Laws Chapter 62C, section 6(b) requires every fiduciary receiving income taxable under Chapter 62, including a trustee in bankruptcy but excluding a receiver of a domestic corporation, to file an annual return of his taxable income. For these purposes, the Commissioner has prescribed Form 2, Fiduciary Income Tax Return, as the annual return to be filed. Thus, a Chapter 7 trustee acting on behalf of a debtor corporation is required to file Form 2, but only if the debtor corporation's bankruptcy estate recognizes net taxable income for the applicable period, as such income is subject to tax under G.L. c. 62. See also DD 98-4.

In rare instances a Chapter 7 trustee in bankruptcy may be under order by the Bankruptcy Court, pursuant to 11 U.S.C. § 721, to continue the operation of the debtor corporation during the pendency of the debtor corporation's Chapter 7 case. In such instances, rather than filing a Form 2, the trustee is required to pay the corporate excise imposed under G.L. c. 63 on behalf of the debtor corporation and file Form 355, Business or Manufacturing Corporation Excise Return, for the period in which the trustee continues to operate the debtor corporation. See LR 81-21.[\[2\]](#)

/s/Alan LeBovidge

Alan LeBovidge

Commissioner of Revenue

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[\[1\]](#) Although Chapter 7 debtors may include individuals and partnerships as well as corporations, this Directive focuses on Chapter 7 debtors that are corporations.

[\[2\]](#) LR 81-21 established the reporting requirements for Chapter 11 receivers and trustees in bankruptcy. Under this ruling, a trustee or examiner appointed in a Chapter 11 case is required to pay the corporate excise and file corporate excise returns for the period of such appointment. Note that LR 81-21 was issued within the context of the former Bankruptcy Act of 1898. In 1978, Congress enacted the Bankruptcy Code, which repealed the Bankruptcy Act. Insofar as Chapter XI of the Bankruptcy Act is succeeded by Chapter 11 of the Bankruptcy Code, LR 81-21 remains in full force and effect, except that the reference to “receiver” should be taken to be a reference to a “trustee” or “examiner” appointed pursuant to 11 U.S.C. § 1104.